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UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
PORTLAND DIVISION

DALLAS BUYERS CLUB, LLC,

Plaintiff,

v.

JOHN HUSZAR

Defendants.

Case No.: **3:15-cv-0907-AC**

DECLARATION OF DR KAL TOTH IN
SUPPORT OF DEFENDANT'S MOTION
FOR SUMMARY JUDGMENT

FRCP 56

I, Kal Toth, declare as follows:

1. As Vice President of Systems Engineering and later Vice President of Total Quality at The CGI Group, a company of over two thousand employees that developed software based systems for defense, transportation and communication applications including a highly secure messaging system for Canada's embassies abroad, I managed a team conducting independent verification and validation of the system software for this \$50M project. As VP Total Quality I trained project teams across the company's regional offices on the best software engineering practices to follow and adapt to satisfy project needs.
2. As Director of Quality for Hughes Aircraft of Canada I led teams assuring the development of the system and software for five air traffic control systems, as well as the evolution of Hughes' software development process from a traditional waterfall development model to a comprehensive iterative software development model.
3. As Vice President of Engineering for Datalink Systems Inc. I directed and verified the work of software engineers developing and maintaining a complex software-intensive system capturing data and distributing real time stock quotes to mobile customer devices.
4. I was also the director of two academic programs delivering software engineering and information technology courses and master degrees to working professionals in Oregon and mature students attending nine universities in Western Canada.
5. I assessed the reliability of MaverickMonitor exploring the software development processes and work products used to create MaverickMonitor which I've documented in several expert reports.
6. I have read the "Bunting Report" filed as Docket 145 in this case.
7. Bunting appears to be knowledgeable and trained as a forensics investigator of digital media inspecting computer memories and log files using forensics tools and utilities. He has taught several forensics courses. However, Mr. Bunting does not appear to have any training in Software Validation and Verification, nor does he appear to have work experience in this area. His CV provides no evidence that he has any experience developing industry or commercial grade software, or comprehensively testing software-intensive systems to ensure that they reliably, accurately, and consistently meet requirements under normal, stressed, and loaded conditions.
8. Bunting's tests can only be characterized as "confidence tests" configured to show that the system is functioning. His tests do not provide objective evidence that the system works reliably as designed and intended. Bunting's tests are run under very lightly loaded conditions and are not nearly rigorous enough to conclude that the system works consistently, reliably and correctly under either typical or atypical operational loads and conditions.

9. Bunting's tests employs four (4) personal computers PCs and a source PC (seeder). These computers have different BitTorrent (BT) clients (open source software applications running the BitTorrent protocols). He installs 4 movie clips on the source PC which "seeds" (makes available) these movies clips to the other 4 PCs for download using BT. Bunting then installs a "torrent file" for each of the 4 movie clips - one torrent file on each of the 4 PCs. After a period of time he confirms that each of the 4 PCs acquires the desired movie clip. In the second phase he works with Perino and MaverickEye's MaverickMonitor system claiming it detects that the test movie clips are stored on the test PCs.
10. Bunting's test procedures and test results are highly ambiguous. The size of these movie clips is not clear (could be only a few pieces). Furthermore, he does not state whether MaverickMonitor detects all of the pieces of one movie clip on each PC, or all of the pieces of all four movies on all four PCs, or only a few pieces of one movie per PC. In other words, his descriptions and expected results are obfuscating given that it is not possible to reason about the completeness of his test procedures, know what the expected results should be, or whether the expected results are truly satisfied.
11. Bunting's tests are also trivial. Testing with only 4 PCs with only 4 short movie clips provides does not provide objective proof that the system will run correctly in an operational settings were 100s or even 1000s of PCs collaborate in Bit Torrent swarms with numerous seeders, downloading 100s of full feature movies consisting of 100s or even thousands of pieces.
12. In my experience, effective testing must be driven by technical specifications of how the system is required to perform under various operational conditions where test procedures, and expected results are precisely and systematically spelled out, and are repeatable. Trivial, ambiguously specified tests and results can disguise behavior under load. I therefore conclude that Bunting's testing methodology and asserted results are completely inadequate for validating the MaverickMonitor system.

I swear under the penalty of perjury under the laws of the United States of America that the above is true and correct.

Executed on: April 30, 2018



Dr. Kal Toth
Declarant